

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA.

Plaintiff.

Case No. 2:11-cr-00022-MMD-GWF

## ORDER REGARDING SUPPLEMENTAL BRIEFING

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JOHN KANE and ANDRE NESTOR.

## Defendants.

The Court has ordered a hearing on the parties' objections to the Magistrate Judge's Report and Recommendation. Several issues require supplemental briefing for the efficient and just resolution of those objections.

GOOD CAUSE APPEARING, the Court HEREBY ORDERS the parties to submit supplemental briefing on the following:

(1) Regarding whether the video poker machines at issue are “protected computers” under the Computer Fraud Abuse Act (“CFAA”):

a. In other relevant contexts, how have courts construed the meaning of language identical to the statutory language contained in 18 U.S.C. § 1030, “used in or affecting interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States.”

b. The parties should also provide a discussion regarding the appropriate statutory interpretation of the above language contained in (a), including relevant references to the legislative history. However, the parties should not provide citation to cases or legislative history already provided to the Court in previous briefings.

(2) Regarding whether Defendants “exceeded authorized access” under the CFAA:

a. Explain in specific detail how Defendants allegedly used the video poker machines to engage in fraud;

b. In light of *United States v. Nosal*, 676 F.3d 854, 863-864 (9th Cir. 2012) and the considerable legislative history demonstrating that Congress intended the CFAA to punish computer hacking, rather than computer mis-use, was Defendants' conduct comparable to hacking or mis-use?

The supplemental briefs will be filed simultaneously. The briefs must be filed by April 24, 2013, and should not exceed ten (10) pages.

ENTERED THIS 15<sup>th</sup> day of April 2013.

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE